

CHAPTER 83

PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL

SUBCHAPTER 1 INTRODUCTION

8:83-1.1 Purpose and intent

(a) It is intended that Pharmaceutical Assistance to the Aged and Disabled (PAAD) shall extend assistance to certain persons whose level of income disqualifies them for medical assistance under the New Jersey Medical Assistance and Health Services Act, but who have significant needs for prescribed drugs and/or insulin, insulin needles, insulin syringes, and/or certain diabetic materials and are unable to fully meet the cost of such items.

(b) This manual has been developed as a statement of policy and procedures and is applicable only to eligibility for the PAAD Program.

8:83-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, Laws of 1975, effective February 19, 1976;
2. Chapter 268, Laws of 1977, effective January 1, 1978;
3. Chapter 171, Laws of 1978, effective December 22, 1978;
4. Chapter 27, Laws of 1979, effective March 1, 1979;
5. Chapter 499, Laws of 1981, effective March 1, 1982;
6. Chapter 209, Laws of 1985, effective August 1, 1985;
7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986;
8. Chapter 16, Laws of 1989, effective February 1, 1989; and
9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991; and
10. Chapter 30, Laws of 1992, effective June 29, 1992.

11. Chapter 3, Laws of 1993, effective January 13, 1993 and retroactive to January 1, 1993;
12. Chapter 27, Laws of 1995, effective February 15, 1995, retroactive to January 1, 1995;
13. Chapter 323, Laws of 1995, effective April 4, 1996; and
14. Reorganization Plan No. 001-1996.

(b) These Statutes supplement the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

SUBCHAPTER 2 DEFINITIONS

8:83-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Annual income" means all income from whatever source derived, actually received or anticipated.

"Anticipated income" means the amounts of income the applicant can reasonably be expected to receive during the calendar year.

"Applicant" means an individual who applies for PAAD, either personally or through an authorized agent.

"Authorized agent" means a person who initiates the PAAD application for a person who is incompetent or incapable of filing the PAAD application on his/her behalf.

"Authorized representative" means a person with legal authority to act on behalf of an individual in making decisions related to the individual's enrollment in, disenrollment from, and access to negotiated prices and Transitional Assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program as defined by 42 C.F.R. 403.802.

"Beneficiary" means an individual who has been found eligible for PAAD benefits.

"Business income" means net income derived from a business, trade or profession or from the rental of property after deductions of the ordinary and necessary expenses attributable to the business, trade, profession, or to the rental or property which are allowed under the Federal Internal Revenue Code and regulations issued thereunder.

"Calendar year" means a year beginning January 1 and ending on December 31. It is the base period utilized to determine annual income and PAAD eligibility.

"Centers for Medicare and Medicaid Services (CMS)" means the agency of the Federal Department of Health and Human Services which is responsible for the administration of the Medicare program in the United States. CMS was formerly known as the Health Care Financing Administration (HCFA).

"Commissioner" means the Commissioner of the Department of Health and Senior Services.

"Current year" means the calendar year in which a person applies or reapplies for PAAD.

"Department" means the Department of Health and Senior Services.

"Electronic Data Interchange (EDI) Enrollment Form" means an agreement signed by a Medicare Part B Supplier authorizing PAAD to bill Medicare electronically on its behalf for claims that are eligible under both PAAD and Medicare.

"Expiration date" means the date when a beneficiary's PAAD eligibility ends.

"Legend Drug" means any approved drug product which by Federal law cannot be dispensed without a prescription and bears the statement on the label: "Caution: Federal law prohibits dispensing without a prescription".

"Lifeline Credit Program" means the utility assistance program that offers a benefit in the form of a credit to the utility account during the heating season to eligible New Jersey residents.

"Medicare" means medical assistance provided to certain aged and disabled persons as authorized under Title XVIII (Medicare) of the Social Security Act.

"Medicare-endorsed prescription drug discount card program," "endorsed program," or "endorsed discount card program" means any prescription drug discount card program that has received Medicare endorsement and whose endorsed sponsor has entered into a contract with CMS.

"Medicare Part B Supplier" means a supplier of Medicare Part B (Medical Insurance) services to Medicare beneficiaries including Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS).

"Medicare Prescription Drug Discount Card and Transitional Assistance Program" or "Medicare Drug Discount Card Program" means the program established under section 1860D-31 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, Dec. 8, 2003.

"National Suppliers Clearinghouse (NSC)" means the entity that issues Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) supplier authorization numbers nationwide to Medicare Part B Suppliers for the Centers for Medicare and Medicaid Services (CMS). The National Supplier Clearinghouse is located at P.O. Box 100142, Columbia, SC 29202-3142.

"NSC Supplier Number" means the authorization number issued by the National Supplier Clearinghouse (NSC) to a Medicare Part B Supplier of Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) for the Centers for Medicare and Medicaid Services (CMS).

"PAAD Co-pay" means the amount of \$ 5.00 which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, insulin needles, and certain diabetic testing materials. The co-pay is not reimbursable by the PAAD. The \$ 5.00 co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or rebated in whole or in part.

"Pharmaceutical assistance" means the payments authorized by the Department in the form of a check to a participating pharmacy on behalf of a PAAD beneficiary.

"Pharmacy" means any pharmacy located in New Jersey, operating under a valid permit from the Board of Pharmacy of the State of New Jersey, which has filed an application and agreement of participation which has been approved by the New Jersey Medicaid Program.

"Prescription drugs" means all approved legend drugs, including any interchangeable drug products contained in the latest list approved and published by the Drug Utilization Review Council in conformance with the provisions of the "Prescription Drug Price and Quality Stabilization Act," and insulin, insulin syringes, insulin needles and certain diabetic testing materials when prescribed.

1. The term "prescription drugs" includes:
 - i. Any drug product which by Federal law cannot be dispensed unless ordered by a physician, dentist or podiatrist;

- ii. Every product considered to be a legend prescription drug which is required by the Federal Food, Drug and Cosmetic Act to have the following statement on the manufacturer's original packaging label: "Caution: Federal law prohibits dispensing without a prescription";
 - iii. Insulin, insulin syringes and insulin needles. While not legend drugs, these items are covered by this program when prescribed;
 - iv. Diabetic testing materials including blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and bloodletting devices and lancets (electronically monitored devices are not included); and
 - v. Syringes and needles for injectable medicines for the treatment of multiple sclerosis.
2. The term "prescription drugs" excludes cosmetics drugs as indicated at N.J.A.C. 8:83C-1.15 unless medically necessary.

"Previous year" means the calendar year preceding the year in which the person is applying or reapplying for PAAD. For example, 1995 is the "previous year" when referring to an application which is dated between January 1, 1996 through December 31, 1996, inclusive.

1. If a person, who is required to submit a Federal, State and/or City Income Tax return, applies for PAAD at the beginning of a calendar year but has not yet filed an income tax return for the previous year, the last year for which the person filed a tax return is considered to be the "previous year" when completing the PAAD application.

"Provider" means any individual, partnership, association, corporation, institution, or any other public or private entity, agency, or business concern, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program, and the Pharmaceutical Assistance to the Aged and Disabled Program, and where applicable, holding a current valid license, and lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto.

"Reasonable cost" means the maximum allowable cost of prescription drugs plus a dispensing fee as determined by the Commissioner.

"Resident" means "one legally domiciled within the State (of N.J.) for a period of 30 days immediately preceding the date of application for inclusion in the PAAD Program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile." (See N.J.A.C. 10:69A-6.4 for residence requirements.)

"Special needs trust" means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 8:83-2.2 for provisions.)

"Tenants Lifeline Assistance Program" means a utility assistance program that offers a benefit in the form of a check issued to tenants whose utilities are included in their rent and do not have a separate utility bill.

"Transitional Assistance" means a subsidy that transitional assistance enrollees may apply toward the cost of covered discount card drugs in the manner described in 42 C.F.R. § 403.808(d).

"Viatical settlement" means the sale or cashing in of a life insurance policy prior to death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.

8:83-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary;
2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;
3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established;

4. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust;
5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits;
6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court;
7. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke, or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime;
8. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve. The Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee;
9. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power;
10. The trust shall specifically state that the trustee shall be compensated only as provided by law (N.J.S.A. 3B:18-2 et seq.). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law;
11. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the

appropriate eligibility determination agency on an annual basis;

12. The State shall be given advance notice of any expenditure in excess of \$ 5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures;
13. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

SUBCHAPTER 3 ADMINISTRATIVE ORGANIZATION

8:83-3.1 Department of Health and Senior Services

The Department of Health and Senior Services is the administrative unit of the State government which has control over the administration of PAAD. Under the terms of the PAAD law, this Department is responsible for the general policies governing administration of PAAD, and for effecting the issuance of rules, regulations and procedures in accordance with the Administrative Procedure Act for implementing the statutory provisions.

8:83-3.2 Division of Medical Assistance and Health Services

The Division of Medical Assistance and Health Services is the administrative unit of the Department of Human Services that performs certain administrative functions for, or in conjunction with, the Department.

8:83-3.3 Pharmaceutical Assistance to the Aged and Disabled Program

The Pharmaceutical Assistance to the Aged and Disabled is the program in the Department which has the direct responsibility for the processing of eligibility applications from applicants.

SUBCHAPTER 4 SCOPE OF SERVICE

8:83-4.1 Statutory limitations

By statute, the Pharmaceutical Assistance to the Aged and Disabled Program is limited to payment or reimbursement to pharmacies for the

reasonable cost of prescription drugs for eligible persons which exceeds the PAAD co-pay.

8:83-4.2 Principles of reimbursement to participating pharmacies

(a) Reimbursement for PAAD prescriptions will be made only to pharmacies located in New Jersey and operating under a valid permit from the Board of Pharmacy of the State of New Jersey. In order to become an approved provider, such a pharmacy must file an application and agreement of participation which must be approved by the Division of Medical Assistance and Health Services of the Department of Human Services. The application shall contain the pharmacy's NSC Supplier Number issued by the National Supplier Clearinghouse (NSC) or other appropriate agent of the Centers for Medicare and Medicaid Services (CMS) or a statement that the pharmacy has applied for a NSC Supplier Number to enroll as a Medicare Part B supplier. A copy of one of the proofs of enrollment listed in N.J.A.C. 8:83C-1.3(c)2 shall be attached to the application. The pharmacy shall also complete and return the Electronic Data Interchange (EDI) Enrollment Form attached to the application.

(b) No reimbursement will be made to an unlicensed pharmacy or to a pharmacy located in another state or country.

(c) Reimbursement on behalf of PAAD beneficiaries will be made directly to the participating pharmacies and will be for the reasonable cost of prescription drugs of beneficiaries as determined by the Commissioner, Department of Human Services, which exceeds the \$ 5.00 co-payment per prescription.

8:83-4.3 Interchangeable drug products

(a) Whenever any interchangeable drug product contained in the latest list approved and published by the Drug Utilization Review Council is available for the prescription written, the PAAD Program shall reimburse only for the reasonable cost of the interchangeable product, less the PAAD co-pay, unless:

1. The prescriber specifies that substitution is not permitted; or
2. For certain brand name products as specified at N.J.A.C. 10:51-4.19(b), the prescriber handwrites the statement "Brand Medically Necessary" on the prescription form.

(b) If the prescriber does not specify to the contrary, the PAAD beneficiary has two options:

1. To purchase an interchangeable drug product which is equal to or less than the maximum allowable cost, at the PAAD co-pay; or

2. To purchase the prescribed drug product which is higher in cost than the maximum allowable cost and pay the difference between the two, in addition to the PAAD co-pay.

(c) If the prescriber specifies on the prescription that substitution is not permitted, and that the brand name drug is medically necessary, when required, the PAAD Program will reimburse for the reasonable cost of the prescribed product, less the PAAD co-pay. In this instance, the beneficiary may purchase the prescribed product at the PAAD co-payment.

8:83-4.4 Beneficiary co-payment

(a) No direct payment to beneficiaries will be made under the PAAD Program, except as noted in (b) below. The beneficiary must pay the pharmacy a nonrefundable PAAD co-pay per prescription or per purchase of insulin, insulin syringes, insulin needles or diabetic testing materials or syringes and needles for injectable medicines used for the treatment of multiple sclerosis.

(b) In the event that a PAAD beneficiary receives his/her eligibility identification card later than 30 days from the date that his/her complete and valid Eligibility Application was received by the PAAD program, he/she may be eligible to receive direct reimbursement for prescription drugs purchased. See N.J.A.C. 10:69A-5.4 for details.

SUBCHAPTER 5 APPLICATION PROCESS

8:83-5.1 General provisions

The application process includes all activity relating to a request for eligibility determination. It begins with the receipt by the Department of an eligibility application and continues in effect until there is an official disposition of the request by the Department.

8:83-5.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application on his or her own behalf, DHSS shall accept any one of the following listed in the order of priority, as an authorized agent for the purpose of initiating such application:

1. Power of attorney;
2. A close relative by blood or marriage, that is, parent, spouse, son, daughter, brother, sister;

3. A representative payee designated by the Social Security Administration;
4. A staff member of a public or private social service agency, of which the person is a client, who has been designated by the agency to so act;
5. A friend.

8:83-5.3 Eligibility effective date

(a) The PAAD eligibility effective date for an initial PAAD applicant, who meets all of the PAAD eligibility criteria, is the date when processing of a valid and complete eligibility application is completed by the PAAD program.

(b) DHSS shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries. Generally, renewals of eligibility shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiary's income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 8:83-6.2.

1. Those eligible for the biennial process will be mailed an eligibility card for the second year automatically.
2. Those beneficiaries required to renew annually or biennially must submit a valid renewal application 45 days prior to their expiration date to insure that their PAAD benefits continue uninterrupted; however, if beneficiaries are late in submitting their renewal applications, but apply within 90 days after the expiration date, their PAAD benefits will continue uninterrupted. If the renewal application is submitted more than 90 days after the expiration date, the eligibility effective date will be the date when a valid and completed renewal application is processed by the PAAD program. If the PAAD beneficiary is late in filing his or her renewal application by more than 90 days after the expiration date, the PAAD program shall not make reimbursement until the new eligibility period has been established.

8:83-5.4 Exceptions from normal standards

(a) There may be exceptional cases where the processing of an eligibility application cannot be completed within a normal 30-day period. Where substantially reliable evidence either of eligibility or ineligibility is still lacking; the application shall be continued in pending status. In each such case, however, DHSS shall be prepared to demonstrate that the delay resulted from one of the following:

1. Circumstances wholly within the applicant's control; or
2. A determination to afford to an applicant whose proof of eligibility has been inconclusive, further opportunity to develop additional evidence of eligibility before final action on this application; or
3. An administrative or other emergency that could not reasonably have been avoided; or
4. Circumstances wholly outside the control of both the applicant and the PAAD program.

(b) A PAAD applicant, who meets all the PAAD eligibility criteria, can reasonably expect to receive his/her PAAD temporary eligibility card within 30 days from the date that a complete and valid Eligibility Application is received by PAAD.

(c) In the event that mailing of the eligibility card is delayed, the PAAD program will reimburse the PAAD beneficiary directly for the cost (minus a \$ 5.00 co-payment per prescription) of all prescription drugs purchased by the person on or after the 30th day after his/her properly completed application was received by the PAAD program, subject to the following conditions:

1. The eligibility application renewal application must have been fully and properly completed.
2. The PAAD beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the PAAD program. The claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address.
3. No direct reimbursement will be made for any drugs purchased after the date when the beneficiary receives his eligibility identification card.

8:83-5.5 Agency controls

(a) The Commissioner shall establish operating policies within the Department to expedite the processing of applications and assure the maximum possible compliance with the standards set forth in this manual.

(b) The Department has the responsibility for reviewing a statistically valid representative sample of PAAD cases to assure that beneficiary eligibility is

determined consistent with State law and eligibility regulations. A quality control review, of sample cases selected on a random basis, includes:

1. Analysis of the beneficiary's case record, including the application, which is maintained by the PAAD Bureau;
2. A personal interview with the beneficiary or the beneficiary's representative(s) to review eligibility for PAAD and availability of third party resources; and
3. Verification of eligibility factors and third party liability information through collateral contacts.

(c) The Department, in conjunction with the Division of Medical Assistance and Health Services, has the responsibility for monitoring providers participating in the PAAD program, verifying that claims submitted to the program by such providers are in compliance with program regulations, and investigating PAAD beneficiaries in matters involving potential fraud and/or abuse.

(d) DHSS, in conjunction with the Division of Medical Assistance and Health Services, shall, as appropriate, recover benefits incorrectly paid on behalf of a PAAD beneficiary.

8:83-5.6 Responsibilities in the application renewal process

(a) Pursuant to statutory authority, the Department establishes procedures on the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) The Pharmaceutical Assistance to the Aged and Disabled Program has responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions;
2. Process applications and reapplications;
3. Issue eligibility cards to eligible persons and to notify ineligible persons promptly;
4. Automatically mail reapplication forms approximately four months prior to the eligibility expiration date;
5. Microfilm eligibility application and supporting documents and retain microfilm for audit purposes; and
6. Gather information to determine eligibility for Lifeline programs

(c) The applicant or beneficiary has the responsibility to:

1. Complete the PAAD eligibility application/renewal application form(s) legibly and accurately:
 - i. Answering all questions fully;
 - ii. Presenting all necessary evidentiary documents, including a copy of any third party health insurance cards and/or Medicare prescription benefits coverage cards;
 - iii. Reading the certification and authorization statement;
 - iv. Signing or marking the application or renewal application;
 - v. Obtaining the signature or mark of the spouse (if married) and the signature of the preparer (if applicable) on the application or renewal application.
2. Assist the Department and the Division of Medical Assistance and Health Services in securing evidence that corroborates his statements when necessary.
3. Agree to a review by the Department or its agent, if randomly selected for review. PAAD eligibility may be terminated if the beneficiary refuses to cooperate with a quality control request.
4. Assign benefits to the State of New Jersey when prescription drug costs are covered in part by any other plan of assistance or insurance.
5. Reapply for eligibility on forms mailed by the Department, at least 45 days prior to his/her eligibility expiration date, if he/she wishes to renew PAAD eligibility.
6. Complete his or her renewal application in person if selected as part of a sample group by PAAD. PAAD eligibility will not be renewed if the beneficiary refuses an in-person eligibility review;
7. If the application mailed by PAAD is lost in the mail, misplaced or not received due to the applicant's change of address, it is the applicant's responsibility to contact PAAD for a new application; and
8. If the applicant does not wish the PAAD program to act as his or her "authorized representative" for the purpose of

coordinating Medicare and PAAD benefits, it is the applicant's responsibility to file a written "opt-out" letter with the program.

(d) The beneficiary has the responsibility to:

1. Notify PAAD whenever any one of the following occurs:
 - i. His or her marital status changes.
 - ii. He or she moves anywhere within the State of New Jersey, in which case, he or she shall submit proof of new address.
2. Return his or her eligibility card to PAAD whenever becoming ineligible due to one of the following:
 - i. He/she moves out of the State of New Jersey.
 - ii. He/she becomes eligible for Medicaid or any other plan of assistance or insurance that wholly covers pharmaceutical services.
 - iii. His/her or their annual income increases to an amount which exceeds the legal limit.
 - iv. He/she was determined eligible based on his/her disability and he/she stops receiving Social Security Disability benefits.
 - v. When requested by PAAD because required information to confirm eligibility was not submitted, or scheduled recovery payments are in arrears.
3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf. Failure to fully repay the State for incorrectly paid benefits could cause the suspension of his or her PAAD benefits in the future, as well as possible withholding of all or some of his or her rebates or refunds which may be due him or her from the State of New Jersey.

8:83-5.7 Combined application for PAAD/Lifeline

(a) There shall be only one application for those beneficiaries who apply for both PAAD and Lifeline.

1. A beneficiary may file one application for both programs on the same form.

2. If an applicant wishes to apply only for Lifeline, he or she shall still use the AP-2 form. (See N.J.A.C. 8:83A-4.8).
3. On reapplication for Lifeline, the applicant shall complete an AP-12 renewal form.

(b) Beneficiaries who apply for PAAD shall follow the procedures and meet the qualifications of the program in this chapter.

(c) Beneficiaries who apply for Lifeline will follow the procedures and meet the qualifications of the program in N.J.A.C. 8:83A.

SUBCHAPTER 6 ELIGIBILITY REQUIREMENTS

8:83-6.1 Age

(a) To be eligible for PAAD, the applicant shall be 65 years of age or older or shall be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Department. The Department will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.

(b) The following are acceptable proofs of age:

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:
 - i. Birth certificate;
 - ii. Baptismal certificate;
 - iii. Bris certificate;
 - iv. Social Security records verifying age (can be obtained from local security office);
 - v. Railroad retirement letter (can be obtained from Railroad Retirement Board).
2. Secondary proofs: If the applicant cannot supply one of the documents listed above, copies of any two of the following documents are acceptable:
 - i. Insurance policy;
 - ii. Driver's license;
 - iii. School record;

- iv. State or Federal census record;
- v. Church record of Baptism (age five or after);
- vi. Confirmation certificate;
- vii. Marriage record;
- viii. Employment record;
- ix. Union record;
- x. Military record;
- xi. Medicare card;
- xii. Delayed birth certificate;
- xiii. Applicant's child's birth certificate;
- xiv. Physician's or midwife's record of applicant's birth;
- xv. Immigration record;
- xvi. Naturalization record;
- xvii. Passport.

(c) If under age 65, the following are acceptable proofs of disability:

- 1. A copy of a Social Security award certificate issued in the last six months.
- 2. A Social Security Form or record.
- 3. A document issued by Social Security that establishes Medicare eligibility. The document must be dated within six months prior to the date of application.

8:83-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$21,850 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$26,791 to be eligible for PAAD.

1. An applicant and spouse shall be considered separate and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.
 - i. Any support payment received by the applicant for the sole benefit of the applicant shall be considered as income for PAAD eligibility purposes.
2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.
 - i. PAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for PAAD (for example, when the income of an applicant and his institutionalized spouse is combined at \$25,060, the applicant is ineligible for PAAD, but if the applicant and spouse are considered separated, the applicant could be eligible for PAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of PAAD. Jointly owned income sources, will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:
 - i. Social Security benefits paid to or on behalf of the applicant;
 - ii. Veterans benefits;
 - iii. Disability benefits, whether public or private;
 - iv. Salaries;
 - v. Wages;
 - vi. Bonuses;
 - vii. Commissions;
 - viii. Fees;

- ix. Dividends;
- x. Interest taxable and nontaxable;
- xi. Capital gains;
- xii. Royalties;
- xiii. Bequests and death benefits;
- xiv. Support payments;
- xv. Unemployment benefits
- xvi. Pensions and black lung benefits;
- xvii. Annuities (contributory and non-contributory, qualified and nonqualified);
- xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) (Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;
- xix. Business income (net);
- xx. Fair market value of prizes and awards.
- xxi. Gambling and lottery winnings; and
- xxii. Rental income (net after expenses).

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

- i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
- ii. Benefits received under New Jersey State Homestead Rebates;
- iii. Proceeds from spouse's life insurance;
- iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;
- v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;

- vi. Agent Orange payments;
- vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5);
- viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;
- ix. Holocaust reparations;
- x. Proceeds from viatical settlements;
- xi. Proceeds received by the beneficiary of a Special Needs Trust (see N.J.A.C. 8:83-2.2 for provisions);
- xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;
- xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and
- xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted);

(d) The applicant must be able to document the amounts reported upon request by the Department, and will be required to submit photocopies of his/her Federal, State and/or City income tax return and other acceptance evidence.

(e) PAAD eligibility is conferred based upon annual income for the current calendar year, which is estimated at the time of application. Previous year income information is used as a gauge and supplements estimates of current income to determine current eligibility. However, if previous year income exceeds the standard, but current year income is expected to fall within legal limits, an initial applicant may estimate current year income for the purpose of establishing PAAD eligibility.

(f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year and shall be required to repay benefits paid for all prescriptions and Lifeline benefits from January 1 through December 31 of the calendar year.

(g) Upon renewal of eligibility, all re-applicants must submit previous year income information to substantiate previous estimates. Requests by re-applicants

to use anticipated income, as the basis for eligibility, when previous year income exceeds the PAAD standard, will be reviewed individually.

(h) The PAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

(i) PAAD beneficiaries are required to notify the PAAD program immediately if their current year income exceeds the PAAD income standard.

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

(m) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost-of-living adjustment for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commission will provide notice of the new income limits annually by publication in the New Jersey Register.

8:83-6.3 Citizenship

A person shall not be required to be a citizen of the United States in order to be eligible for PAAD.

8:83-6.4 Residence

(a) The statute provides that "any...resident of this State...shall be eligible for PAAD. 'Resident' means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant."

1. Interpretation: The term resident shall be interpreted to mean a person having his customary place of abode in New Jersey. The fact that an individual was or may have been

motivated to move to New Jersey because of the availability of medical facilities does not, of itself, justify a finding that he has not established a residence in this State; however, such inquiry need not be made if an individual has been physically present in New Jersey for a period exceeding three months.

2. The applicant must be able to substantiate residence upon request by the Department and is required to submit photocopies of two documents showing evidence of current residence at the time of initial application.
3. The following are examples of sources of evidence of residence:
 - i. Motor vehicle records (e.g., valid driver's license);
 - ii. Landlord's records and rent receipts;
 - iii. Public utility records and receipts (e.g., electric bill);
 - iv. Personal property assessment records;
 - v. Records of business or professional people, such as doctors, department stores, etc.;
 - vi. Post office records;
 - vii. Records of social agencies, public or private;
 - viii. Employment records.
4. Determination as to continued New Jersey residence of a person absent from this State shall be based upon contact with the applicant by a representative of the Department.
5. In reaching a decision as to continuing New Jersey residence of an absentee, the issue is whether the individual intends to return to New Jersey or remain indefinitely in the other jurisdiction. If a beneficiary leaves New Jersey with the intent to establish a place of abode elsewhere, he becomes ineligible under the PAAD program and must notify the Pharmaceutical Assistance to the Aged and Disabled program of the address and return the PAAD eligibility card.

8:83-6.5 Recipient of other assistance and pharmaceutical coverage

(a) The State statute provides that any person shall be ineligible for PAAD if he/she is otherwise qualified for assistance under the Act of which the PAAD Act is a supplement (Chapter 413, Laws of 1968). This is interpreted to mean that a State resident 65 years of age or older cannot be eligible for PAAD when receiving Medicaid benefits.

(b) The State statute further provides that any otherwise eligible person whose prescription drug costs are wholly covered by any other plan of assistance or insurance shall be ineligible for PAAD.

8:83-6.6 PAAD eligibility application and renewal application forms

(a) The Pharmaceutical Assistance to the Aged and Disabled Eligibility Application (AP-2) is the only acceptance form to be utilized in determining the applicant's initial eligibility for PAAD. These forms are available to applicants in central and local offices and other convenient locations throughout the State.

(b) The only acceptable form to be utilized in determining the beneficiary's continuation of eligibility will be the PAAD Eligibility Renewal Application Form (AP-12). This form is automatically mailed to the beneficiary approximately four months prior to the eligibility expiration date.

8:83-6.7 Social Security account number

(a) Each applicant for PAAD benefits must include his or her Social Security Account Number (SSAN) on the application/reapplication form. The SSAN is a unique and verifiable number which is utilized to differentiate between persons with the same name. Married persons must also indicate the SSAN of their spouse.

(b) In the event that the applicant does not have a SSAN, a unique identifying number will be assigned by the PAAD program. This number will be used throughout the beneficiary's PAAD eligibility.

8:83-6.8 Certification

The applicant for PAAD benefits must certify that all the answers to the questions and items on the application/renewal application form are true and accurate to the best of his/her knowledge. This certification must be dated, signed or marked by the applicant and spouse (if married), and the preparer of the form (if other than the applicant), before the application/renewal application can be processed.

8:83-6.9 Authorization

(a) By signing/marking the certification and authorization statement on the application/renewal application form, the applicant/reapplicant authorizes:

1. The Department to verify any information on the form by contacting the Social Security Administration, the Internal

Revenue Service, the New Jersey Division of Taxation, employers and others as the need arises;

2. Visitation and review by representatives of the Department, or the Division of Medical Assistance and Health Services;
3. Assignment of benefits to the State of New Jersey if he/she or his/her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of prescription drugs; and
4. Prescribing practitioners to release information concerning prescriptions which have been paid by the PAAD program, to the Department and the New Jersey Division of Medical Assistance and Health Services or any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

8:83-6.10 Eligibility period

(a) A PAAD eligibility card is effective for the dates indicated on the card. The PAAD beneficiary shall renew his or her eligibility in accordance with the provisions of N.J.A.C. 8:83-5.3(b). In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years. Beneficiaries who are subject to the two year renewal provision will have their eligibility card renewed automatically for one additional year.

(b) Approximately four months prior to his or her expiration date, PAAD will notify the beneficiary if he or she must complete a renewal form. Renewal applications must be returned to the PAAD Program by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

8:83-6.11 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or beneficiaries obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or beneficiary or their authorized agent.

(b) Disclosure of information without the consent of the applicant, beneficiary or their authorized agent shall be limited to purposes directly connected with the administration of the program pursuant to State law and regulations.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or beneficiaries cannot be identified.
2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, beneficiary or their authorized agent challenging the program's statute, regulations or a determination made pursuant thereto, or against whom an action or proceeding for the recovery of incorrectly paid benefits has been instituted.
3. The release of information to the program's contractors, the Lifeline Credit Program, Tenant Lifeline Assistance Program, Social Security Administration, the Division of Medical Assistance and Health Services and other plans of assistance or insurance that covers the cost of prescription drugs in whole or in part.
4. The release of information or files to the State Treasurer or other governmental agency or to their duly authorized representatives, for an audit, review of expenditures or similar activity authorized by law.
5. The release of information or files to any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.
6. The release of information to the Department and participating licensed veterinarians for the purpose of verifying eligibility for benefits under the Animal Population Control Program.
7. The release of information or files to County Welfare Agencies for the purpose of determining eligibility for Medicaid benefits or for subsequent verification of Medicaid eligibility.
8. The release of information or files to the Division of Motor Vehicles in the Department of Law and Public Safety for the implementation of the Fair Automobile Insurance Act of 1990 (P.L. 1990, c.8).
9. The release of information or files to the beneficiary's telephone or telecommunications carrier or utility company for the purpose of determining eligibility for the Lifeline

Telecommunication program or for the distribution of Lifeline Telecommunication and Universal Service Fund benefits.

10. The release of beneficiary information or files to Medicare endorsed discount plans, Medicare Advantage Plans, Medicare Prescription Drug Plans or the Center for Medicare and Medicaid Services for the purpose of coordination of benefits between the Medicare Drug Plan and PAAD.

8:83-6.12 Appeal process

(a) When PAAD determines that an application is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to Pharmaceutical Assistance to the Aged and Disabled, PO Box 715, Trenton, New Jersey 08625-0715, within 30 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) PAAD will forward the hearing request, if determined to be a contested case, to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location of the hearing.

(c) The petitioner will have the burden of demonstrating that PAAD's determination deviates from the requirements and standards of the regulations and statute.

(d) When the PAAD beneficiary requests a fair hearing, he or she shall clearly indicate the existence of a disputed question of fact or law arising from the requirements and standards of the rules and statutes of the PAAD program. If the beneficiary fails to establish a contested case, the PAAD program shall deny the hearing request.

1. Hearings are not intended to be informational or to provide a forum for the expression of public sentiment on PAAD actions or policies.

SUBCHAPTER 7 RECOVERIES

8:83-7.1 Recoveries for benefits correctly paid

Pursuant to P.L. 1983, C. 371, no encumbrance or recovery of any kind shall be imposed or sought from the estate of a qualified applicant or an eligible person after his death because of assistance paid, or to be paid, on his behalf under the PAAD program, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under the New Jersey Medical Assistance and Health Services Act (P.L. 1968, C. 413, codified as N.J.S.A. 30:4D-1 et seq.)

8:83-7.2 Recoveries for benefits incorrectly paid

(a) As provided in N.J.S.A. 30:4D-1 et seq., the Department or Division of Medical Assistance and Health Services may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary. If it is determined that an applicant's income exceeded the eligibility limit in a prior year, a new PAAD card or Lifeline benefits will not be issued until the beneficiary and/or his or her spouse agrees to repay the benefits received incorrectly. If the beneficiary cannot repay the bill in full, a monthly repayment schedule will be established by the Program, but if the beneficiary fails to fulfill the requirements of the repayment agreement, future PAAD and Lifeline benefits may be suspended until the bill is paid in full.

1. The term "incorrect payment" includes, but is not limited to:
 - i. Payment made on behalf of a beneficiary whose drug costs are wholly covered by another source;
 - ii. Payment made on behalf of a beneficiary who is no longer eligible, or has been incorrectly determined to be eligible to receive benefits;
 - iii. Payment made as a result of fraud perpetrated by a beneficiary, his/her authorized agent and/or provider.

(b) The Division of Medical Assistance and Health Services, on behalf of DHSS, shall take all reasonable measures to ascertain the legal liability of third parties to pay for prescription drugs arising out of injury, disease, or disability, where it is known that a third party is or may be liable to pay all or part of the drugs of a beneficiary. Payment on behalf of an eligible individual shall not be withheld because of the liability of third parties, if third party resources are not currently available to pay the individual's expenses. The Division of Medical Assistance and Health Services shall recover from any such third party the full amount of payments made. Upon request of the Director, the Attorney General may enforce such right, institute legal proceedings against the third party who is or may be liable for the payment for drugs, or intervene in any proceedings, in the name of the Commissioner, or in the name of the injured person, his guardian, executor, administrator or other appropriate representative.

8:83-7.3 Liens

Provisions for the application of liens shall be consistent with and conform to any provisions for liens as provided in N.J.S.A. 30:4D-1 et seq.

8:83-7.4 Penalties

Any person violating any provision of the PAAD Act shall be subject to the applicable civil and criminal penalties contained in the "New Jersey Medical Assistance and Health Services Act" (N.J.S.A. 30:4D-1 et seq.). In addition, any eligible person who violates any provision of the PAAD Act shall be subject to a suspension of their eligibility for one year for a first offense and permanent revocation of their eligibility for a second offense.